

## § 240.3a4-2

solely clerical or ministerial and any person who is required under the laws of any State to register as a broker or dealer in that State solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.

[50 FR 27946, July 9, 1985]

### § 240.3a4-2 Exemption from the definition of “broker” for bank calculating compensation for effecting transactions in fiduciary accounts.

(a) A bank that meets the conditions for exception from the definition of the term “broker” under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), except for the “chiefly compensated” condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities pursuant to Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) if:

(1) The bank can demonstrate that sales compensation, as defined in § 240.3b-17(j), received during the immediately preceding year is less than 10% of the total amount of relationship compensation, as defined in § 240.3b-17(i), received during that year;

(2) The bank maintains procedures reasonably designed to ensure compliance with the “chiefly compensated” condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) with respect to a trust or fiduciary account:

(i) When the account is opened;

(ii) When the compensation arrangement for the account is changed; and

(iii) When sales compensation, as defined in § 240.3b-17, received from the account is reviewed by the bank for purposes of determining an employee’s compensation; and

(3) The bank complies with Section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C)).

(b) For purposes of this section, the term *year* means either a calendar year or other fiscal year consistently used

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by the bank for recordkeeping and reporting purposes.

[66 FR 27796, May 18, 2001]

### § 240.3a4-3 Exemption from the definition of “broker” for bank effecting transactions as an indenture trustee in a no-load money market fund.

A bank that meets the conditions for exception from the definition of the term “broker” under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), except for the “chiefly compensated” condition in Section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions as an indenture trustee in a no-load money market fund, as defined in § 240.3b-17(f) and § 240.3b-17(e), respectively.

[66 FR 27796, May 18, 2001]

### § 240.3a4-4 Exemption from the definition of “broker” for small bank effecting transactions in investment company securities in a tax-deferred custody account.

(a) A small bank is exempt from the definition of the term “broker” under Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely for effecting transactions in securities of an open-end management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) in a tax-deferred account for which the bank acts as custodian under Section 3(a)(4)(B)(viii) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(1) The bank is not associated with a broker or dealer and does not have an arrangement with a broker or dealer to effect transactions in securities for the bank’s customers;

(2) Any bank employee effecting such transactions:

(i) Is not an associated person of a broker or dealer;

(ii) Primarily performs duties for the bank other than effecting transactions in securities for customers; and

(iii) Does not receive compensation for such transactions from the bank, the executing broker or dealer, or any other person related to: